

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM NUMBER: O-101

DATE: October 16, 2013
TO: Committee of Bar Examiners
FROM: Gayle Murphy, Senior Director, Admissions
SUBJECT: **Two-Day Examination Proposal**

BACKGROUND

While there have been more recent changes to the scope of the California Bar Examination and the grading process, there have been no substantive changes to the format of the examination since 1983 when the Performance Test was first introduced as a component of the examination.

The primary reasons for having a bar examination are for public protection, to assess the knowledge and abilities of those seeking admission to the practice of law and have an objective measure as to whether those seeking admission have acquired through their legal studies the minimum competence expected of those entering the profession. As part of its ongoing responsibilities, the Committee of Bar Examiners (Committee), on a continual basis, reviews the scope, format and grading of the bar examination to ensure that it remains valid, reliable and fair. As part of that review, the Committee also considers whether the examination is being administered in the most effective and efficient way possible.

Over the last couple of years there have been several meetings held, which included Committee members, psychometricians, staff and others who may have been in attendance, to discuss these issues, and in particular, the concept of shortening the examination from three days to two days. As a result of these meetings, the Committee decided that the proposal for changing the current examination structure, so that the General Bar Examination could be administered over two days instead of three days, should be seriously considered. The Attorneys' Examination, which consists of the written portions of the General Bar Examination, is already administered over two days.

According to the psychometricians who have met with the Committee, a two-day examination (one day devoted to a written test and one day to the Multistate Bar Examination (MBE)) with equal weight assigned to the MBE and written portions would be comparable to the current three-day examination and would not negatively impact the reliability of the examination or decision making consistency.

After consideration of the various pros and cons of shortening the duration of the examination, the Committee took the following action:

It was moved, seconded and duly carried that in furtherance of the Committee's efforts to ensure that the California Bar Examination more efficiently tests applicants for admission to practice law in California to determine minimum competence in the law, that outreach on the proposal to reduce the General Bar Examination to two days from three days proceed with the concept of the two-day examination constructed as follows: 1) Tuesday morning session consisting of three hours during which three, one-hour essay questions would be administered, 2) Tuesday afternoon session consisting of three and one-half hours during which two, one-hour essay questions and one, 90-minute Performance Test would be administered and 3) Wednesday – morning and afternoon sessions consisting of three hours each, during which 100 multiple-choice items for each session would be administered (MBE); that during the grading process, the written and MBE portions of the examination be weighted equally.

The Committee initiated conversations about this proposal with several constituencies, including the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight during its May 2012 meeting. Representatives from the Committee discussed the proposal with the Law School Council and a Public Forum was held in May 2013 to receive comments.

After receiving input from its psychometric consultants and State Bar Office of Admissions staff, comments from the public and lengthy discussions over the course of several years, the Committee took the following action approving the proposal to reduce the examination from three days to two days:

It was moved, seconded and duly carried, Member Steven Renick voting no, that effective at a yet to be determined date, the General Bar Examination be constructed as follows: 1) One morning session consisting of three hours during which three, one-hour essay questions would be administered, 2) One afternoon session consisting of three and one-half hours during which two, one-hour essay questions and one, 90-minute Performance Test would be administered, 3) Morning and afternoon sessions consisting of three hours each, during which 100 multiple-choice items for each session would be administered (the MBE); that during the grading process of the reconstructed examination the written and MBE portions of the examination be weighted equally; and that an implementation plan, which should include the date of the first examination during which the reconstructed examination will be administered, be prepared by staff and submitted for review by the Committee during its October 2013 meeting in preparation for submission of the proposal to the Board of Trustees.

The MBE will always be administered on the last Wednesday in February and July. Whether the written portion of the examination should be given on Tuesday or Thursday may be subject to change depending on whether there is a conflict with the day of a significant religious holiday that a number of applicants might observe, such as Tisha B'Av. The Committee's action approving the change in the format of the California Bar Examination is subject to approval by the Board of Trustees.

DISCUSSION

Throughout this process, the Committee has conferred with several psychometric consultants and reports were prepared on several issues. One of the reports, "The Estimated Effect on Examination Quality and Passing Rates of Different Ways of Modifying California's Bar Examination" prepared by Stephen P. Klein, Ph.D. and Roger Bolus, Ph.D., was prepared specifically for consideration of the two-day proposal. Copies of the report are available upon request.

The Committee also held a public forum to discuss the proposal, in addition to another issue relative to the Committee's responsibilities related to the oversight of accredited and unaccredited law schools in California. Two law school deans supported the concept, one law school dean was against the proposal and one member of the public was against. Excerpts from the transcript are available upon request.

In preparation for discussion of this matter during a recent meeting, the Committee asked staff to list the various pros and cons of reducing the examination from three days to two days, which would necessitate certain adjustments to the number of written questions, the weighting and the length of the Performance Test. While not all inclusive, the following pros and cons of the proposal were submitted to the Committee:

Pros:

- The examination would more efficiently test the knowledge and skills necessary to determine minimum competence in the law.
- The examination would become more gender neutral.
- It would be less expensive to administer and grade, which means that the next request for an increase in fees would be further in future.
- There exists the possibility that because there are fewer components, the time it takes for grading could be reduced.

Cons:

- There is a perception that the examination would be easier.
- There is a perception that giving more weight to the MBE portion of the examination would make the examination less valid for writing skills and send the wrong message to law schools.
- The opportunity to impute scores when a portion of an examination is lost due to incidents that might occur during an administration of an examination that may negatively impact applicants' scores would be reduced.

- There would be costs associated with making the changes to the examination questions, computer systems and existing contracts.
- Staff's workload would temporarily increase.

There continues to be some confusion with regard to what the bar examination is intended to do. The examination is not designed to predict success as a lawyer or even that a lawyer is ready for the practice of law. In fact, the best predictor of bar examination scores are the grades an applicant received during law school. So, in a sense, the examination is confirmation that the necessary legal skills and knowledge were learned during the three or four years of law study, through whatever means, which are needed to show minimum competence as a lawyer. As earlier stated, it is an examination developed to test minimum competence in the law.

When considering implementation issues, of particular importance is the cost associated with making the changes contemplated by the Committee. Currently, examination test centers are contracted for the next two years, so if it is determined to proceed, those contracts should be taken into consideration, i.e., two years notice would be better than one year. Reducing the number of days at a facility for which a contract has already been signed, would not be, most likely, that expensive when compared to canceling a contract in its entirety, which would only happen if the dates of the examination were to change. That would not happen.

Another primary expense associated with the changed format would be in the editing that would be required of the Performance Tests to make them into 90-minute Performance Tests rather than 3-hour tests. This could be accomplished using qualified contractors (members from the Performance Test Drafting Team and Examination Development and Grading Team) and would most likely, result in costs in the neighborhood of \$75,000. Additionally, substantive adjustments would need to be made to the grading database and other State Bar computer systems, which could cost up to \$100,000 or more.

The costs alone do not seem substantial in the context of the \$19,000,000 budget for the Office of Admissions, and could be included with a future budget without having to raise fees at the present time. There are, however, other "costs" that should be taken into consideration and among those are the staff resources. In addition to the day-to-day business accomplished by the staff in the Office of Admissions, there are a number of significant projects currently underway, which require staff attention. The Los Angeles Office of Admissions will be relocating to another space at the end of this year, a new computer system needs to be identified, obtained and implemented and, as all other offices and departments within the State Bar, an internal review or "micro-reorg" of systems and staffing is taking place. To accomplish the goals associated with these projects, in addition to ensuring the customary functions of the Committee are being carried out appropriately, and implement a two-day examination may be more than should be contemplated for completion by the office of this time.

There are other State Bar projects that might make the transition to a two-day examination at this time difficult as well. The State Bar's Board of Trustees at its

October 2013 meeting voted to proceed with the Task Force on Admissions Reform's recommendations and authorized the formation of a Task Force that will be appointed to draft implementing rules and consider other issues related to implementation. At least one of the proposals could directly impact the workload in the Office of Admissions, as it would require that applicants complete an additional requirement before being recommended to the Supreme Court for admission:

Pre-admission: A competency training requirement fulfilled prior to admission to practice. There would be two routes for fulfillment of this pre-admission competency training requirement: (a) at any time in law school, a candidate for admission must have taken at least 15 units of practice-based, experiential course work that is designed to develop law practice competencies, and (b) in lieu of some or all of the 15 units of practice-based, experiential course work, a candidate for admission may opt to participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school;

The Office of Admissions confirms that applicants have met all requirements for admission and produces the motion to the Supreme Court certifying that applicants are eligible for admission to practice law in California. Finally, if what are now Board of Trustees' recommendations for those seeking admission and new admittees are approved by the Supreme Court, implementation of those new requirements and a change in the format of the bar examination may be just a little too much for applicants to process at one time.

RECOMMENDATION:

While staff remains in favor of the Committee's action to reduce the examination from three days to two, I am recommending that the project be deferred at this time. A more appropriate time for pushing forward might be when some of the projects and proposals discussed earlier are completed and implemented, the budget supports the need for reducing the costs associated with the three-day examination and more support for the proposed change from external sources has been generated.

PROPOSED MOTION:

Should the Committee agree with this recommendation, the following motion is suggested:

Move that further consideration of the proposal to change the format of the California Bar Examination from three days to two days be deferred until such time the Committee considers it appropriate to proceed with forwarding the proposal to the Board of Trustees for its approval.